

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Obernolte
(Principal coauthor: Senator Fuller)
(Coauthor: Assembly Member Steinorth)
(Coauthor: Senator Morrell)

February 26, 2015

An act to ~~amend~~ add Section 2714 of 2777.3 to the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Obernolte. Surface ~~mining and mining:~~ *reclamation plans: exemption. plans: renewable energy generation facility.*

The Surface Mining and Reclamation Act of 1975 prohibits a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency, as defined, for the operation of the mining operation. ~~Existing law exempts certain activities from the act's requirements. The act requires an amendment to an approved reclamation plan that is a substantial deviation from the approved plan to be filed with, and approved by, the lead agency and submitted to the Director of Conservation for review and comment.~~

~~This bill would additionally exempt the operation of a renewable energy generation facility, as specified, from the act's requirements.~~

This bill would provide that an amendment to an approved reclamation plan that proposes to use a designated portion of the mined lands for the construction and operation of a renewable energy

generation facility and that meets specified requirements shall be deemed to be a substantial deviation from the approved plan only with respect to that designated portion of the mined lands, as specified. Because a lead agency would be required to determine the applicability of this provision, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2777.3 is added to the Public Resources
2 Code, to read:

3 2777.3. (a) An amendment to an approved reclamation plan
4 that proposes to use a designated portion of the mined lands for
5 the construction and operation of a renewable energy generation
6 facility, including associated onsite structures, equipment,
7 machines, tools, other materials, or related land improvements,
8 shall be deemed to be a substantial deviation from the original
9 approved reclamation plan for purposes of Section 2777 only with
10 respect to that designated portion of the mined lands.

11 (b) An amendment to an approved reclamation plan described
12 in subdivision (a) shall comply with all of the following:

13 (1) The provisions of this article.

14 (2) All required permits for the construction, landscaping, or
15 related land improvements that have been approved by a public
16 agency in accordance with applicable provisions of state law and
17 locally adopted plans and ordinances, including, but not limited
18 to, the California Environmental Quality Act (Division 13
19 commencing with Section 21000).

20 (3) The operating permit for the surface mining operation has
21 an approved closure plan and financial assurance that the lead
22 agency determines to be sufficient to perform the removal of the
23 surface mining operation and to restore the mined lands. A
24 calculated surplus or salvage value shall not be utilized to offset

1 *the costs of reclaiming the mined lands subject to the approved*
2 *reclamation plan.*

3 *(c) An amendment to an approved reclamation plan described*
4 *in subdivision (a) shall not be adverse to a surface mining*
5 *operator's vested right acquired pursuant to Section 2776 or be*
6 *incompatible with future mineral extraction consistent with*
7 *subparagraph (C) of paragraph (3) of subdivision (c) of Section*
8 *3676 of Title 14 of the California Code of Regulations.*

9 *SEC. 2. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *a local agency or school district has the authority to levy service*
12 *charges, fees, or assessments sufficient to pay for the program or*
13 *level of service mandated by this act, within the meaning of Section*
14 *17556 of the Government Code.*

15 ~~SECTION 1. Section 2714 of the Public Resources Code is~~
16 ~~amended to read:~~

17 ~~2714. This chapter does not apply to any of the following~~
18 ~~activities:~~

19 ~~(a) Excavations or grading of lands conducted for farming.~~

20 ~~(b) Onsite excavation and onsite earthmoving activities that are~~
21 ~~an integral and necessary part of a construction project and that~~
22 ~~are undertaken to prepare a site for construction of structures,~~
23 ~~landscaping, or other land improvements associated with those~~
24 ~~structures, including the related excavation, grading, compaction,~~
25 ~~or the creation of fills, road cuts, and embankments, whether or~~
26 ~~not surplus materials are exported from the site, subject to all of~~
27 ~~the following conditions:~~

28 ~~(1) All required permits for the construction, landscaping, or~~
29 ~~related land improvements have been approved by a public agency~~
30 ~~in accordance with applicable provisions of state law and locally~~
31 ~~adopted plans and ordinances, including, but not limited to, the~~
32 ~~California Environmental Quality Act (Division 13 (commencing~~
33 ~~with Section 21000)).~~

34 ~~(2) The lead agency's approval of the construction project~~
35 ~~included consideration of the onsite excavation and onsite~~
36 ~~earthmoving activities pursuant to the California Environmental~~
37 ~~Quality Act (Division 13 (commencing with Section 21000)).~~

38 ~~(3) The approved construction project is consistent with the~~
39 ~~general plan or zoning of the site.~~

1 ~~(4) Surplus materials shall not be exported from the site unless~~
2 ~~and until actual construction work has commenced and shall cease~~
3 ~~if it is determined that construction activities have terminated, have~~
4 ~~been indefinitely suspended, or are no longer being actively~~
5 ~~pursued.~~

6 ~~(e) Operation of a plant site used for mineral processing,~~
7 ~~including associated onsite structures, equipment, machines, tools,~~
8 ~~or other materials, including the onsite stockpiling and onsite~~
9 ~~recovery of mined materials, subject to all of the following~~
10 ~~conditions:~~

11 ~~(1) The plant site is located on lands designated for industrial~~
12 ~~or commercial uses in the applicable county or city general plan.~~

13 ~~(2) The plant site is located on lands zoned industrial or~~
14 ~~commercial, or are contained within a zoning category intended~~
15 ~~exclusively for industrial activities by the applicable city or county.~~

16 ~~(3) None of the minerals being processed are being extracted~~
17 ~~onsite.~~

18 ~~(4) All reclamation work has been completed pursuant to the~~
19 ~~approved reclamation plan for any mineral extraction activities~~
20 ~~that occurred onsite after January 1, 1976.~~

21 ~~(d) Prospecting for, or the extraction of, minerals for commercial~~
22 ~~purposes where the removal of overburden or mineral product~~
23 ~~totals less than 1,000 cubic yards in any one location and the total~~
24 ~~surface area disturbed is less than one acre.~~

25 ~~(e) Surface mining operations that are required by federal law~~
26 ~~in order to protect a mining claim, if those operations are conducted~~
27 ~~solely for that purpose.~~

28 ~~(f) Any other surface mining operations that the board, as~~
29 ~~defined by Section 2008, determines to be of an infrequent nature~~
30 ~~and that involve only minor surface disturbances.~~

31 ~~(g) The solar evaporation of sea water or bay water for the~~
32 ~~production of salt and related minerals.~~

33 ~~(h) Emergency excavations or grading conducted by the~~
34 ~~Department of Water Resources or the Central Valley Flood~~
35 ~~Protection Board for the purpose of averting, alleviating, repairing,~~
36 ~~or restoring damage to property due to imminent or recent floods,~~
37 ~~disasters, or other emergencies.~~

38 ~~(i) (1) Surface mining operations conducted on lands owned~~
39 ~~or leased, or upon which easements or rights-of-way have been~~
40 ~~obtained, by the Department of Water Resources for the purpose~~

1 of the State Water Resources Development System or flood control,
2 and surface mining operations on lands owned or leased, or upon
3 which easements or rights-of-way have been obtained, by the
4 Central Valley Flood Protection Board for the purpose of flood
5 control, if the Department of Water Resources adopts, after
6 submission to and consultation with the Department of
7 Conservation, a reclamation plan for lands affected by these
8 activities, and those lands are reclaimed in conformance with the
9 standards specified in regulations of the board adopted pursuant
10 to this chapter. The Department of Water Resources shall provide
11 an annual report to the Department of Conservation by the date
12 specified by the Department of Conservation on these mining
13 activities.

14 (2) ~~Nothing in this subdivision shall require the Department of~~
15 ~~Water Resources or the Central Valley Flood Protection Board to~~
16 ~~obtain a permit or secure approval of a reclamation plan from any~~
17 ~~city or county in order to conduct surface mining operations~~
18 ~~specified in paragraph (1). Nothing in this subdivision shall~~
19 ~~preclude the bringing of an enforcement action pursuant to Section~~
20 ~~2774.1, if it is determined that a surface mine operator, acting~~
21 ~~under contract with the Department of Water Resources or the~~
22 ~~Central Valley Flood Protection Board on lands other than those~~
23 ~~owned or leased, or upon which easements or rights-of-way have~~
24 ~~been obtained, by the Department of Water Resources or the~~
25 ~~Central Valley Flood Protection Board, is otherwise not in~~
26 ~~compliance with this chapter.~~

27 (j) (1) ~~Excavations or grading for the exclusive purpose of~~
28 ~~obtaining materials for roadbed construction and maintenance~~
29 ~~conducted in connection with timber operations or forest~~
30 ~~management on land owned by the same person or entity. This~~
31 ~~exemption is limited to excavation and grading that is conducted~~
32 ~~adjacent to timber operation or forest management roads and shall~~
33 ~~not apply to onsite excavation or grading that occurs within 100~~
34 ~~feet of a Class One watercourse or 75 feet of a Class Two~~
35 ~~watercourse, or to excavation for materials that are, or have been,~~
36 ~~sold for commercial purposes.~~

37 (2) ~~This exemption shall be available only if slope stability and~~
38 ~~erosion are controlled in accordance with subdivision (f) of Section~~
39 ~~3704 and subdivision (d) of Section 3706 of Title 14 of the~~
40 ~~California Code of Regulations and, upon closure of the site, the~~

1 person closing the site implements, where necessary, revegetation
2 measures and postclosure uses in consultation with the Department
3 of Forestry and Fire Protection.

4 (k) Excavations, grading, or other earthmoving activities in an
5 oil or gas field that are integral to, and necessary for, ongoing
6 operations for the extraction of oil or gas that comply with all of
7 the following conditions:

8 (1) The operations are being conducted in accordance with
9 Division 3 (commencing with Section 3000).

10 (2) The operations are consistent with any general plan or zoning
11 applicable to the site.

12 (3) The earthmoving activities are within oil or gas field
13 properties under a common owner or operator.

14 (4) No excavated materials are sold for commercial purposes.

15 (l) (1) The immediate excavation or grading of lands affected
16 by a natural disaster for the purpose of restoring those lands to
17 their prior condition.

18 (2) The immediate removal of material deposited by a flood
19 onto lands being farmed for the purpose of restoring those lands
20 to their prior condition.

21 (m) The operation of a renewable energy generation facility,
22 including associated onsite structures, equipment, machines, tools,
23 or other materials or related land improvements approved by a
24 public agency in accordance with applicable law, including, but
25 not limited to, local plans and ordinances and the California
26 Environmental Quality Act (Division 13 (commencing with Section
27 21000)).